FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 3 1943
CHARLES ELMORE CROPLEY
CLERK

No. 684

In the Supreme Court of the United States

OCTOBER TERM, 1942

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	6
Conclusion	14
Appendix	15

CITATIONS

Cases:

Board of Com'rs v. United States, 100 F. (2d) 929 — 3

Board of Com'rs of Caddo County, Okl. v. United States, 87 F. (2d) 55 — 3, 10

Board of Com'rs of Okfuskee County v. Hutton, 72 Okla. 223, 179 Pac. 922 — 9

Board of Com'rs of Tulsa County, Okl. v. United States, 94 F. (2d) 450 — 3, 9, 12

Bowling v. United States, 233 U. S. 528 — 13

Broadwell v. Board of Com'rs of Bryan County, 88 Okla. 147, 211 Pac. 1040, certiorari denied, 262 U. S. 750 — 13

Bryan County, Okl. v. United States, 123 F. (2d) 782, certiorari denied, 315 U. S. 819 — 7, 12, 13, 14

Carpenter v. Shaw, 280 U. S. 363 — 3, 8

Choate v. Trapp, 224 U. S. 665 — 3, 7, 8, 9

Cramer v. United States, 261 U. S. 219 — 12

English v. Richardson, 224 U. S. 680 — 9

Glacier County, Mont. v. United States, 99 F. (2d) 733 — 3, 10

Grotkop v. Stuckey, 140 Okla. 178, 282 Pac. 611 — 9

Heckman v. United States, 224 U. S. 413 — 12

Iyall v. Yakima County, 130 Wash. 537, 228 Pac. 513 — 3

Morrow v. United States, 243 Fed. 854 — 3, 4, 7, 8, 13

Privett v. United States, 256 U. S. 201 — 13

Sunderland v. United States, 266 U. S. 226 — 13

United States v. Benewah County, Idaho, 290 Fed. 628 — 3, 9

United States v. Board of Com'rs, 6 F. Supp. 401 — 3

United States v. Board of County Com'rs, 13 F. Supp. 641 — 3, 11

United States v. Board of County Com'rs, 19 F. Supp. 635 — 3, 9

United States v. Candelaria, 271 U. S. 432 — 13

513891—43——1

Cases—Continued. Page

United States v. *Chehalis County*, 217 Fed. 281 11
United States v. *Dewey County*, affirmed, 26 F. (2d) 434, certiorari denied, 278 U. S. 649, 14 F. (2d) 781 . . . . . 10, 11
United States v. *Ferry County, Wash.*, 24 F. Supp. 399 . . . 3, 9, 13
United States v. *Lewis County, Idaho*, 95 F. (2d) 236 3
United States v. *Minnesota*, 270 U. S. 181 . . . . . 12, 13
United States v. *Moore*, 284 Fed. 86 13
United States v. *Nez Perce County, Idaho*, 95 F. (2d) 232 . . 3, 10
United States v. *Rickert*, 188 U. S. 432 . . . . . 3, 7, 12
United States v. *Sherburne Mercantile Co.*, 68 F. (2d) 155 . . . 12
United States v. *Spaeth*, 24 F. Supp. 465 . . . . . 3, 4, 7, 8, 9
Ward v. *Love County*, 253 U. S. 17 . . . . . 3, 8, 10, 11
Warren v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 . . . . . 3, 4, 7, 10, 11
Whitmire, v. *Trapp*, 33 Okla. 429, 126 Pac. 578 9
Williams v. *Johnson*, 239 U. S. 414 9

Statutes:

Act of February 8, 1887, sec. 5, 24 Stat. 388 (25 U. S. C. 348) 2, 3, 7, 15
Act of June 28, 1898, c. 517, 30 Stat. 495 9
Act of June 21, 1906, 34 Stat. 325 . . . . . 2, 8, 17
Act of March 1, 1907, 34 Stat. 1034 . . . . . 2, 8, 17
Act of May 27, 1908, c. 199, 35 Stat. 312 8
Nelson Act of January 14, 1889, 25 Stat. 642 . . . . . 2, 7, 15

Miscellaneous:

54 Int. Dec. 65 (1932) 3
49 L. D. 348 (1922) 9
50 L. D. 691 (1924) 9

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion and supplemental memorandum of the district court (R. 24–33) are not officially reported. The opinion of the circuit court of appeals (R. 61–67) is reported in 131 F. (2d) 936.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered December 7, 1942 (R. 67–68). The petition for a writ of cer-

tiorari was filed January 29, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States, in a suit brought after the expiration of the trust period, may recover taxes wrongfully assessed against a tax-exempt Indian allottee, notwithstanding the fact that the taxes were "voluntarily" paid by the allottee, in some cases before and in others after the expiration of the trust period, and notwithstanding the fact that a state court of Minnesota had previously sustained a demurrer to a complaint filed by the allottee for their recovery.

STATUTES INVOLVED

The pertinent provisions of the General Allotment Act of February 8, 1887, 24 Stat. 388 (25 U. S. C. 348); the Nelson Act of January 14, 1889, 25 Stat. 642; the first Clapp Amendment of June 21, 1906, 34 Stat. 325; and the second Clapp Amendment of March 1, 1907, 34 Stat. 1034, are printed in the Appendix, *infra*, pp. 15–18.

STATEMENT

Between 1902 and 1911, the United States granted allotments of land to certain mixed-blood Chippewa Indians of the White Earth Indian Reservation in Mahnomen, Becker, and Clearwater Counties, Minnesota, and issued trust pat-

ents to them in the usual form (R. 18, 20, 24, 25). In these patents the United States agreed to hold the lands in trust for a period of twenty-five years, and then to convey them to the allottees in fee, "discharged of said trust and free of all charge or encumbrance whatsoever" (R. 20, 25),[1] a provision which has been repeatedly construed as conferring upon the Indians a vested tax exemption of which they cannot be deprived without their consent. *United States* v. *Rickert*, 188 U. S. 432; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8).[2]

Notwithstanding these decisions, the Chippewa trust allotments were placed on the tax rolls of

---

[1] General Allotment Act of February 8, 1887, sec. 5, 24 Stat. 389 (25 U. S. C. 348).

[2] See also *United States* v. *Benewah County, Idaho*, 290 Fed. 628 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55 (C. C. A. 10); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232 (C. C. A. 9); *United States* v. *Lewis County, Idaho*, 95 F. (2d) 236 (C. C. A. 3); *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733 (C. C. A. 9); *Board of Com'rs* v. *United States*, 100 F. (2d) 929 (C. C. A. 10); *United States* v. *Board of Com'rs*, 6 F. Supp. 401 (W. D. Okla.); *United States* v. *Board of County Com'rs*, 13 F. Supp. 641 (N. D. Okla); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *Iyall* v. *Yakima County*, 130 Wash. 537, 228 Pac. 513 (1924); 54 Int. Dec. 65 (1932); cf. *Ward* v. *Love County*, 253 U. S. 17, *Carpenter* v. *Shaw*, 280 U. S. 363, *Board of Com'rs of Tulsa County, Okl.* v. *United States*, 94 F. (2d) 450 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635 (N. D. Okla.).

Mahnomen, Becker, and Clearwater Counties prior to the expiration of the twenty-five year trust periods (R. 22–24). A number of allottees, ignorant of their legal rights and faced with the threat of having their lands sold for taxes, paid the assessments; those that did not lost their lands through tax sales (R. 21, 23).

In order to protect the rights of its Indian "wards," the United States brought a class suit in 1914 to enjoin the tax officials of Becker County from making further assessments and collections, and in 1917 the Circuit Court of Appeals for the Eighth Circuit affirmed a judgment granting the Government the relief requested. *Morrow* v. *United States*, 243 Fed. 854. A number of successful suits were brought in succeeding years by the allottees and by the United States to recover previous collections and to prevent other assessments. See, *e. g.*, *United States v. Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).

The few remaining tax claims were finally "lumped together" in the present suits which the United States brought in 1940 against Mahnomen, Becker and Clearwater Counties for the cancellation of all taxes levied prior to the expiration of the trust periods, and for refunds in those instances where the taxes were paid by the allottees (R. 2–8, 24).

Seven parcels were included in the complaint filed by the Government in the Mahnomen County

case. Parcels 1, 3, and 5 were dismissed with the Government's consent, when it developed that taxes levied against parcel 1 before and after the expiration of the trust period in 1927, had been subsequently compromised by the allottee for less than the amount of the taxes assessed after 1927; that the taxes levied against parcel 3 had "been abated and cancelled upon application" to the county; and that the allottee of parcel 5 had lost his tax exemption by applying for and receiving a fee simple patent (R. 20–23). The county stipulated that parcels 2, 4, and 6 were not legally taxable prior to the expiration of the trust periods (R. 13–15) and did not seriously question the Government's right to have such taxes and enforcement proceedings declared illegal and void. The only serious contest arose in connection with parcel 7. There the United States issued a trust patent to Isabelle Garden in December 1902. The county stipulated that this tract "was not legally taxable prior to the year 1928" when the trust period expired (R. 14). Taxes were nevertheless levied against this allotment commencing in 1911, the year Isabelle Garden reached her majority. Taxes for the period from 1911 to 1921, inclusive ($405.97), were paid in full by the allottee prior to 1922. The allottee discharged the taxes for 1922 to 1925 and 1926 to 1934 by the purchase in 1936 of State Assignment Certificate No. 76 in the amount of $33.22 and Tax Assignment Cer-

tificate No. 232 in the amount of $145.93 (R. 15–16, 21–22).

The cases against all three counties were submitted on agreed statements of fact (R. 24, 28). The trial court entered judgments ordering the cancellation of all taxes levied during the trust periods, the restoration to the allottees of lands sold for nonpayment of taxes, and the refund of all taxes levied and paid before the expiration of the trust periods. It refused to order a refund of taxes levied before, but not paid until after, the trust period expired (R. 33–35).

Becker and Clearwater Counties acquiesced in these judgments. Mahnomen County, however, elected to appeal from that portion of the judgment directing it to refund the taxes paid between 1911 and 1921 ($405.97) on parcel 7. The Government then filed a cross appeal from that portion of the judgment denying recovery of taxes levied on parcel 7 between 1922 and 1925 and discharged by the allottee in 1936 ($33.22). The circuit court of appeals held that the United States was entitled to recover all taxes in question, whether paid before or after the expiration of the trust period (R. 62–67).

ARGUMENT

Although conceding that parcel 7, allotted to Isabelle Garden by a trust patent in December 1902, "was not legally taxable prior to the year 1928" (R. 14; Pet. 6, 12), petitioner nevertheless

contends that taxes collected from the allottee in derogation of her tax exemption are not recoverable by the United States for two reasons: (1) because the taxes were "voluntarily" paid by the allottee (Pet. 6, 7–8, 12–15); and (2) because the United States is bound by the allottee's unsuccessful attempt to recover these taxes in proceedings which she brought in the state courts in 1923 (Pet. 6, 15, 17). Both contentions are without merit.[3]

1. Petitioner rightly concedes (Pet. 6, 12) that the trust patent which the United States issued to Isabelle Garden in 1902, pursuant to the General Allotment Act of 1887, 24 Stat. 388 (25 U. S. C. 348), and the Nelson Act of 1889, 25 Stat. 642, conferred on her a twenty-five-year tax exemption which could not be revoked without her consent. *United States* v. *Rickert*, 188 U. S. 432; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).[4] It is petitioner's contention that Isabelle Garden voluntarily relinquished her exemption and paid the taxes in order that she might become an emancipated Indian and manage her allotment as she saw fit (Pet. 12–15). But that right was

[3] The contentions advanced by Mahnomen County are essentially the same as those urged in *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

[4] See also cases cited in n. 2, *supra*, p. 3.

hers under the Clapp Amendments of 1906 and 1907 (34 Stat. 325, 353, 1034) whether she paid the taxes or not.

It is true that the original trust patent which conferred on Isabelle Garden a twenty-five year tax exemption likewise imposed restrictions on her right to alienate the allotment. But the Clapp Amendments, effective as to Isabelle Garden when she reached her majority in 1911, declared that "all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation * * *, held by adult mixed-blood Indians, are hereby removed" Act of June 21, 1906, 34 Stat. 325, 353; Act of March 1, 1907, 34 Stat. 1034. These amendments were ineffective insofar as they attempted to subject these trust allotments to taxation, a fact made clear by this Court in construing identical language[5] in *Choate* v. *Trapp*, 224 U. S. 665, 673; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; see also *Marrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Spurth*, 24 F. Supp. 465 (Minn.). But these amendments did effectively remove all restrictions on alienation because, as this Court has pointed out, exemptions from taxation and nonalienability are "two separate and distinct subjects." *Choate* v. *Trapp*, 224 U. S. 665, 673. The former is a property right protected by the Federal Con-

[5] Act of May 27, 1908, c. 199, 35 Stat. 312.

stitution against either state or federal interference; the latter is an expression of legislative policy which Congress, by virtue of its plenary power over Indian affairs, can change at will, with or without the allottee's consent. *Williams* v. *Johnson*, 239 U. S. 414, 420; *United States* v. *Benewah County*, 296 Fed. 628, 631 (C. C. A. 9); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 401 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468, 469 (Minn.); 49 L. D. 348, (1922).

Since restrictions on alienation can be removed by legislative fiat, it follows that an Indian allotment may be unrestricted and at the same time tax exempt. Such was the situation in *Choate* v. *Trapp*, 224 U. S. 665, 669, 670, 673; *English* v. *Richardson*, 224 U. S. 680; *Board of Com'rs of Tulsa County, Okl.* v. *United States*, 94 F. (2d) 450, 451 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635, 636 (N. D. Okla.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468 (Minn.); *Whitmire* v. *Trapp*, 33 Okla. 429, 126 Pac. 578 (1912); *Board of Com'rs of Okfuskee County* v. *Hutton*, 72 Okla. 223, 179 Pac. 922 (1919); *Grotkop* v. *Stuckey*, 140 Okla. 178, 282 Pac. 611 (1929); 49 L. D. 348, 351–352 (1922); 50 L. D. 691, 693 (1924); see Act of June 28, 1898, c. 517, 30 Stat. 495, 507. Since there is nothing to prevent an allottee from simultaneously possessing an unrestricted fee and a tax immunity,

et to suggest (Pet. 3, 12–15) that Isa-
voluntarily paid taxes which she did
pay in return for a right of alienation
already had by reason of the Clapp
s.

seems evident that the taxes were not
allottee for any purpose other than
her allotment from being sold for un-
She was aware of the consequences
ent, as well as the apparent futility
to the levies. Payments made under
es which prevail in these types of
ly, where the Indians run the risk of
allotments unless the taxes are paid.
eemed "voluntary payments." *Ward*
nty, 253 U. S. 17, 23; *Glacier County*,
ited States, 99 F. (2d) 733, 735 (C. C.
ed States v. *Nez Perce County*, 95 F.
36 (C. C. A. 9); *Warren* v. *County of*
192 Minn. 464, 257 N. W. 67 (1934).
tion that the taxes are not recoverable
paid under protest, formal or other-
sound because the courts have re-
ld that "The United States is not
from recovering taxes paid without
an Indian ward." *United States* v.
County, 95 F. (2d) 232, 236 (C. C. A.

Board of Com'rs of Caddo County, Okl. v.
87 F. (2d) 55, 57 (C. C. A. 10); *United States*,
ty, 14 F. (2d) 784, 791 (S. D. 1926), affirmed,

The language in *Ward* v. *Love County*, 253 U. S. 17, 22, relied upon by petitioner (Pet. 7, 14) is not in point because in that case the United States was not the party plaintiff. When the litigation is commenced by the Indians themselves, they, like other taxpayers, may be subject to local statutes of limitation, statutes governing protests, etc. But these statutes are not applicable when suit is brought by the United States in its sovereign capacity to vindicate a federal policy. Cf. *United States* v. *Chehalis County*, 217 Fed. 281, 285 (W. D. Wash.); *United States* v. *Dewey County*, 14 F. (2d) 784, 791 (S. D.). Where a federal right is involved and the United States is the party plaintiff, "money got through imposition" may be recovered back, whatever be the state law. Cf. *Ward* v. *Love County*, 253 U. S. 17, 24.

2. A federal right is clearly involved in the instant case. In the trust patent which it issued to Isabelle Garden in 1902, the United States agreed to convey the allotment to her at the end of twenty-five years "free of all charge or incumbrance." The Government has the right and the duty to see that its consensual obligations are properly discharged and its declared policies fully

---

26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649; *United States* v. *Board of County Com'rs*, 13 F. Supp. 641, 643 (N. D. Okla.); *United States* v. *Chehalis County*, 217 Fed. 281 (W. D. Wash.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 466, 257 N. W. 77 (1934).

respected. To this end, it may invoke the aid of its courts "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota*, 270 U. S. 181, 194; *United States* v. *Rickert*, 188 U. S. 432, 444 *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. The interest of the United States in having its obligations and policies observed "is one which is vested in it as a sovereign." *United States* v. *Minnesota*, 270 U. S. 181, 194.

The duty of the United States to have its guarantee of tax immunity respected is a continuing obligation even though the allottees have become citizens, the restrictions on alienation have been removed, and the Indians have been otherwise emancipated from a wardship status. *Cramer* v. *United States*, 261 U. S. 219, 232; *Heckman* v. *United States*, 224 U. S. 413, 437; *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819; *Board of Com'rs of Tulsa County, Okl.*, v. *United States*, 94 F. (2d) 450, 452 (C. C. A. 10); *United States* v. *Sherburne Mercantile Co.*, 68 F. (2d) 155, 158 (C. C. A. 9). This duty to recover taxes unlawfully exacted from an allottee is based upon the legal relation of trusteeship and springs from the obligation contained in the terms of the trust to preserve the land so that at the end of the trust period it can be passed to the beneficiary "free of

all charge or incumbrance." *Morrow* v. *United States*, 243 Fed. 854, 859 (C. C. A. 8); *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (W. D. Wash.). Hence, the fact the present suit was not brought and that some of the taxes were not paid until after the expiration of the trust period is immaterial.

Furthermore, the interest of the United States in having its obligations and policies respected, being one which is vested in it as a sovereign (*United States* v. *Minnesota*, 270 U. S. 181, 194), cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria*, 271 U. S. 432, 444; *Sunderland* v. *United States*, 266 U. S. 226, 232; *Privett* v. *United States*, 256 U. S. 201, 204; *Bowling* v. *United States*, 233 U. S. 528, 534. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to this action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. That case is precisely in point. There the allottees assigned their tax-refund claims to one Broadwell who brought suit to recover the taxes in the state courts of Oklahoma. The suit was defeated by a plea of limitations. *Broadwell* v. *Board of Com'rs of Bryan County*, 88 Okla. 147, 211 Pac. 1040 (1922), certiorari

denied, 262 U. S. 750. But that judgment did not prevent the United States from subsequently recovering those taxes in its own courts. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

CONCLUSION

The decision of the Circuit Court of Appeals is in accord with the applicable decisions of this Court. It raises no new question of substance and presents no conflict. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
VERNON L. WILKINSON,
WALTER J. CUMMINGS, JR.,
Attorneys.

MARCH 1943

APPENDIX

Section 5 of the General Allotment Act of February 8, 1887, c. 119, 24 Stat. 388, 389, provides:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period (25 U. S. C. 348.) * * *

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * *

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to

Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; * * *.

The first Clapp Amendment of June 21, 1906, c. 3504, 34 Stat. 325, 353, provides:

> That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The second Clapp Amendment of March 1, 1907, c. 2285, 34 Stat. 1034, provides:

> That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall

be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

U. S. GOVERNMENT PRINTING OFFICE 1943